

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RUSSELL THOMAS PAUGH,

Plaintiff,

v.

**CIVIL NO. 1:22-CV-100
(KLEEH)**

**COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION,**

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 15]
AND REMANDING ACTION TO COMMISSIONER**

On September 27, 2022, the plaintiff, Russell Thomas Paugh ("Plaintiff"), by counsel, filed this lawsuit against the defendant Kilolo Kijakazi, Acting Commissioner of Social Security ("the Commissioner"), for review of the Commissioner's final decision denying his application for social security benefits. ECF No. 1.

On March 30, 2023, and May 31, 2023, Plaintiff and Defendant, respectively, filed cross motions for summary judgment. ECF Nos. 10, 14. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred this motion to United States Magistrate Judge James P. Mazzone. Following a careful review of the record, the magistrate judge entered a Report and Recommendation ("R&R") recommending that the Court grant in part and deny in part Plaintiff's motion for summary judgment, grant in part and deny in part Defendant's motion for summary judgment, and remand the case for further proceedings. ECF No. 15. Specifically, the magistrate judge found that because

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the ALJ failed to consider medical evidence, address the conflict presented by the vocational expert's testimony, the decision was not supported by substantial evidence because it contained errors and omissions which precluded meaningful review. The magistrate judge recommends the Court remand the case. Id.

The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." Id. at 13. It further warned them that the "[f]ailure to timely file objections . . . will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation." Id. at 13. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

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Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, it has reviewed the R&R for clear error. Finding none, the Court **ADOPTS** the R&R in its entirety [ECF No. 15], **GRANTS IN PART and DENIES IN PART** Plaintiff's motion for summary judgment [ECF No. 10], and **GRANTS IN PART and DENIES IN PART** Defendant's motion for summary judgment [ECF No. 14]. This case is hereby **REMANDED** to the Commissioner for further proceedings consistent with the magistrate judge's R&R and this Order.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies of both Orders to counsel of record.

DATED: August 8, 2023

Tom S. Kline

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA